

20-P

GENERAL AND REVENUE SECRETARIAT.

1900-11
(S R)

File No. 161-10

Serial Nos. 1-2

Papers Filed.

Month May 1911

SUBJECT.

Memorial of K. V. Kodandarama Iyer, Mauda
of Damanaqurdu Doddi in the Chennapatna
79. in regard to his claim to the toddy excise
revenue of the village

PREVIOUS REFERENCES.

13. Sept 08; 81-6. S.R. 69-04.
7. Mar 11. 81-9. S.R. 18.3-09

LATER REFERENCES.

7. Sept 11. 81-2. S.R. 22-11
S.R. 22-11 85825 B June 1912

GENERAL AND REVENUE SECRETARIAT.

(Sep Rev)

NOTES.

File No. 161-10

FILE HEADING.

Memorial of K. V. Kodandarama Iyer, Inamdar of
Damanugundu Doddi, village, Channarayana TK.

From

The Private Secretary to H. H. the Maharaja.

No. 2778.

Dated

6.4.11

Received

8.4.11.

Diary No. 4058 }

Enclos.

Spare Copies {

Serial No. /

BRIEF ABSTRACT OF LETTER.

Forwarded for submission of papers in the case, the
Memorial of K. V. Kodandarama Iyer praying for favorable
consideration regard his claim to the Caddy revenue of the
village referred to.

NOTES AND ORDERS.

Submitted with the following files:

S.R. 69-04 sls 156.

S.R. 183-09 sls 159.

Asst

(14)

11/4

12/4

The petitioner's appeal was taken

NOTES—First sheet

12/4/11

Serial
No.

gone into and rejected. The notes in
file no. 883-09 and 69-04 contain a
full history and discussion of the facts of
the case.

The papers have been called for
by the Maharaja

12/4/11 SA

Secy

1st c Dewan

12/4/11

13/4/11

2702
15-4-11

Seen
JMV

15/4/11

15/4/11

11112

17-4-11

Submitted to His Highness

As called for in the Private Secretary's Memo

*Paper under
disposal*

No.2778 dated 6th April 1911, I submit herewith the file of papers relating to the memorial of K.V. Kodandarama Iyer, Inamdar of Damanagundu Doddi, in the Chennapatna Taluk, in regard to his claim to the toddy excise revenue of the village.

3 (1)

2. As will be seen from File No.69 of 1904, the matter was fully considered, and in Government Proceedings

3 (2)

No.1373-5/S.R.69-04-6 dated 10th September 1908, the Inamdar's claim to the toddy excise revenue was rejected for reasons fully explained in that Order. The office

x 3 (1)

notes on the file ^x contain the discussions which led up to this order.

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3. The memorialist then applied for a reconsideration in February 1910, and this further representation was duly considered by Government, and the memorialist was informed that Government saw no reason to reopen the case. (Vide Endorsement No.Fl.2474 dated 15th November 1910).

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4. He next memorialized His Highness the Maharaja on the 12th December 1910, and this memorial was transferred for disposal, with the Private Secretary's Memo No.

No.1768 dated 16th December 1910. The matter was further considered with reference to the points urged in the memorial, and the memorialist was informed in Endorsement No. P Fl.4765 dated 8th March 1911, that Government saw no ground for reconsidering the orders already passed. The office Q notes on file No.183 of 1909, contain the discussions which lead to these orders.

5. No new grounds have been advanced in the present memorial which is a copy of the one submitted to His Highness the Maharaja in December 1910.

lu

P. Mandan
22/4/11

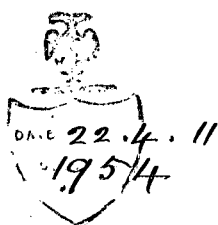
P.T.O

17/4

Record of Cases submitted for the Orders
of His Highness the Maharaja.

Subject.

Memorial of K.V. Kodandarama Iyer,
Inamdar of Damanagundu Doddi, in the Chen-
napatna Taluk, in regard to his claim to
the toddy excise revenue of the village.



672

Order.

KRM
9/5/11

See
order
of May 11

Put up draft with

CSB
13/5/11

14/11
13/5/11

SK
13/5/11

H
13/5

Serial
No.

Draft endorsement subd -

Asa

(121)

16/5

16/5

16/5711

16/5711

SD

See 7)

Issue

26/574

26/574

SD

26/5711

7

2

To Mr. B. Kothandarama Iyer

no 7c 5887 Q 30.5.11

Informing that the order already passed
in the case is final.

no 7c 5888 Q 30.5.11

Copy to the Excise can for information

✓

IV
8/4 PM

No. 2778/1

SOL
Shahyad
54058

OFFICE OF THE PRIVATE SECRETARY
TO HIS HIGHNESS THE MAHARAJA OF MYSORE.

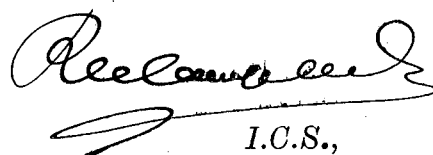
Mysore 4th April 1911.

S.O. 161-10
Sno 1

Petition as shown below, to His Highness the Maharaja, is
transferred to the Secretary to the Government of His Highness the Maharaja
of Mysore, General and Revenue Department (Br: IV), Bangalore, for
submission of papers in the case.

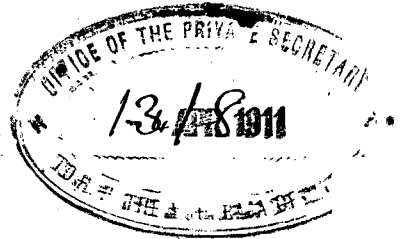
No 1318 of 10-11

By Order,


I.C.S.,

Private Secretary
to H. H. the Maharaja of Mysore.

Call for
revenue
13/11/11



To

His Highness

SRI KRISHNARAJA WADEYAR BAHADUR, G. C. S. I.,

Maharaja of Mysore,

MYSORE.

The humble Memorial of K. V. KODANDARAMIER,
Inamdar of Damanagundu Doddi, Chenna-
patna Talook, Bangalore District.

Most Respectfully Showeth,

THAT the above said Inam Village was granted to one Samukhada Uligada Nuggehalli Puttayya by Your Highness's illustrious grandfather, the late His Highness Sri Krishnaraja Wadeyar Bahadur, under a Sannad dated 11th May 1815, on a Kayam Beriz tenure of 10 pagodas out of a total Beriz of 29-0 6 pagodas. In execution of a decree against the sons of the said Puttayya, the village was put up for auction and purchased by Your Highness's humble memorialist's uncle, one Krishnaswamier. After the demise of the latter in 1900 Your Highness's humble memorialist became the owner of the said village, it having been bequeathed to him by his uncle.

2. THAT from the time of the grant in 1815 till 1901, the *shendi* (toddy) revenue of the Inam Village from all sources was being recovered and enjoyed by the Inamdar for the time being. In the year 1901, however, Your Highness's Government was pleased to withhold from the Inamdar a portion of that revenue. He was given only tree-rent, but the payment of the tree-tax and the shop-rent was suspended.

3. THAT Your Highness's humble memorialist then put forward his claim to the whole *shendi* revenue including the tree-tax and the shop-rent before Your Highness's Government which, after a prolonged enquiry, finally rejected it (the claim) by order No. F. I. 1373-5. S. R. 6904-4, dated 10th September 1908. Being dissatisfied with the above said order, he again prayed for the review of the above order which was also refused by the Government by order No. F. I. 1474 dated 15th November 1910.
S. R. 183-09-2

4. THAT Your Highness's humble memorialist begs leave to most respectfully submit that the order made by the Government is not a legal and equitable one. It is opposed to (a) the records of the case, (b) the rules, dated 2nd August 1910 by which the claims of the Inamdars to the excise revenue are to be determined, and (c) the general rules of interpretation of language.

5. (a) THAT the records of the case go to show that the Sannad relating to the grant of the village in question does not make any reservation in favour of the Government of the items of *shendi* revenue which have been now withheld by it from the Inamdar, who, on the other hand, is absolutely given the full right to recover and enjoy the whole *shendi* revenue without any reservation whatever; and that the Inamdars had been thus recovering and enjoying the whole *shendi* revenue openly and uninterruptedly for such a long period as 85 years (from 1815 to 1901). Thus, the title to the claim now made by Your Highness's humble memorialist is made good by grant as well as by prescription. And the long and uninterrupted possession and enjoyment of that claim by him and his predecessors in title are also made good.

6. (b) THAT the rules of 2nd August 1901 prescribe that "where it is conclusively clear from the Inam Settlement Register that the whole Excise Revenue, *viz.*, Abkari or Panchbob, or only toddy excise has been conceded, the Inam Settlement should be adhered to." Mr. Cole, the then Inam Superintendent, writes on 8th October 1878:—"All rights to Sayer, Abkari, *except to toddy which will be enjoyed as heretofore*, and Forests are reserved." And Mr. Sayed Nasiruddin, the then Assistant Inam Superintendent, says on 28th November 1877 that "the item of toddy trees was included in the beriz and pagodas 2 were charged therefor. The Inamdar is, therefore, entitled to the *revenue arising from toddy trees*." The portions of the above extracts from the Inam Settlement Register in italics (Your Highness's humble memorialist has italicised them) thus show that the Inamdars had been enjoying fully and absolutely the *shendi* revenue, and that they were "entitled to the revenue arising from toddy trees" is conceded. The reservation now claimed by the Government does not find a place in the Inam Settlement Register; and, under these circumstances, Your Highness's humble memorialist should not have been deprived of a large portion of "the revenue arising from toddy trees." In short, the Government under the Rules of 2nd August 1901, should not have gone behind the decision in the Inam Settlement Register, but should have adhered to it.

7. (b) THAT, however, in the Inam Settlement Register, under the head "items enjoyed," the toddy revenue enjoyed by the Inamdar is described as "the rent of date trees." The significance to be attached to the latter expression, *viz.* "the rent of date trees" becomes important, and it will be dealt with under (c) further on. But it is submitted, for Your Highness's kind and favourable consideration, that in the Inam Settlement Register, the two expressions, *viz.* "the revenue arising from toddy trees" and "the rent of date trees" seem to have had one and the same meaning. The user of those expressions had in his mind the idea that they were interchangeable, the one being used for the other. At any rate, he never thought that they should have different meanings, since they had not at that time any difference in meaning.

8. (b) THAT, besides, the above said expression, "the rent of date trees" appears in the statement of the Assistant Inam Superintendent, which he prepared for the Inam Superintendent to form his opinion in the case. That statement should, therefore, be subordinate in importance to the decision of the Inam Superintendent which, as above said, gives clearly to the Inamdar the full right to all the *shendi* revenue. It is the decision of the Inam Superintendent that should have guided the Government in forming an opinion as to the claim of Your Highness's humble memorialist.

9. (b) That under this head there is one more point to be considered. The Rules of 2nd August 1901 say "where it is conclusively clear." The Inam Settlement Register, it is submitted, leaves no doubt whatever that the Inamdar was given full right to all the *shendi* revenue. It is "conclusively clear" from it that he had this right.

10. (c) THAT the ordinary rules of interpreting the language used in documents also show that the claim of Your Highness's humble memorialist is well founded. As above stated, the Inam Settlement Register makes use of two expressions, when it speaks of what was being enjoyed by the Inamdar as *shendi* revenue. These two expressions are, "the revenue arising from toddy trees" and "the rent of date trees." It is submitted that these expressions do not signify two different things. In the first place, the distinction in meaning among the various expressions used in the Rules of 2nd August 1901 was not in existence in 1878 when the Inam Settlement Register came into existence. In 1878 the *shendi* revenue included revenue derivable from all the sources, but in 1901 that revenue was classified into four items. It is improper that the significance of an expression given to it at a later period should be attached to it when it is used in a document of an early period. In fact, we would be attaching to that expression a meaning which its user never thought of.

11. (c) THAT then again, if the two expressions above stated are to have different significations, the expression "the revenue arising from toddy trees" will have, as it were, its full meaning cut short or limited by the other expression, "the rent of date trees" with its meaning of 1901. In the Inam Settlement Register, there is nothing to show that this is really what was meant. It has been shown above that it could not be the intention of the Assistant Inam Superintendent who uses these two expressions.

12. THAT the Government has, by what has been now done, given retrospective effect to the Rules of 2nd August 1901. And this cannot be done; more especially, where by so doing the rights of parties already acquired are not only affected, but altogether set at naught.

13. THAT the decision of the Government is opposed to the views of such experienced officers as Mr. Purnayya who, on a consideration of all the facts and circumstances of the case, recommended to the Government to allow in full the claim of Your Highness's humble memorialist.

14. THAT under the circumstances above set forth, it is very hard that Your Highness's humble memorialist should be deprived, on grounds not legal and not equitable, of large revenue from the village granted as Inam by the late His Highness Sri Krishnaraja Wodeyar Bahadur.

15. THAT to this humble memorial is attached an appendix containing the Review Petition to the Government and the written argument, which more fully set out the case of Your Highness's humble memorialist who prays that they may be kindly perused.

THE humble memorialist, wherefore, most humbly and respectfully prays that Your Highness may be graciously pleased to send for the records and to pass such orders thereon as may be thought legal and equitable, which order, the memorialist fully hopes and firmly believes, would be favourable to him.

FOR this act of grace and mercy, the memorialist, as in duty bound, ever prays for Your Highness's long life and happiness.

H. V. Mahandharan

APPENDIX.

Before the Government of His Highness the Maharaja of Mysore.

BANGALORE.

PETITIONER:—K. V. Kodandarama Iyer, Inamdar, Damanagundu,
(Chennapatna Taluq).

THE written arguments of the Petitioner:—

THE petitioner submits that there are two main points for consideration in the case, *viz.*, (1) whether the Government can now re-open the question whether the petitioner is not entitled to the toddy revenue; (2) if it can do it, whether there is evidence to show that the Inamdar is entitled to that revenue.

1. THE petitioner humbly submits that the Government is not now entitled to re-open the question. It is concluded by its own rules and by its own conduct from questioning the right of the petitioner to the toddy revenue.

THE Excise Rules of 2nd August 1901 prescribe the procedure to be observed by the Revenue Officers in determining whether an Inamdar is entitled to the toddy revenue. In Rule 18 (3) it is said that "where it is conclusively clear from the Inam Settlement Register that the whole Excise Revenue, *viz.*, Abkari or Panchabab, of only toddy Excise has been conceded, the Inam Settlement should be adhered to." It is clear from the Inam Settlement Register that this toddy excise has been conceded, for the then Inam Superintendent, Mr. Cole, in column 20 says on the 8th October 1878:—"All rights to Sayer, Abkari, *except to toddy which will be enjoyed* as heretofore, and forests are reserved." It is submitted that the Government cannot now, by reason of the above rules, go behind the Inam Settlement as above set forth which allows full rights to toddy.

MOREOVER, on the 28th November 1877 the Assistant Inam Superintendent, Mr. Sayed Nasurudeen, says in column 19 of the Inam Settlement Register that "the item of toddy trees was included in the beriz and pagodas 2 were charged therefor." The Inamdar is, therefore, entitled to the revenue arising from toddy trees." And in column 14 of the above register, the Beriz includes the toddy trees. It is thus clear that the Inam Settlement confers on the Inamdar the right to the full toddy revenue.

It is true that in column 19 of the said Register, under the head "items enjoyed" the toddy revenue enjoyed by the Inamdar is described as "the rent of date trees." Mr. Sparkes, the Excise Commissioner, seems to have been influenced by this expression in arriving at the conclusion on which the Government is pleased to base its decision.

It therefore becomes necessary to see what this expression "rent of date trees" meant at the time when it was used in the document in which it finds a place, *viz.*, the Inam Settlement Register of 1878. It is improper to attach to this expression a meaning which it had not at the time when it was used in a particular document, but which it acquired subsequently. In short, that expression had not acquired in 1878 the technical meaning which was given to it only 1897.

"THE first and most elementary rule of construction is that it is to be assumed that the words and phrases are used in their technical meaning if they have acquired one, and in their popular meaning if they have not." (Maxwell on Interpretation of Statutes page 2.) As above shown, at the time when the Inam Settlement Register was prepared in 1878, the expression "rent of date trees" had not acquired any

technical meaning. It was only in 1897 that a distinction was drawn among the expressions "shop-rent," "tree tax" and "tree rent", while prior to that time, "toddy revenue" was used loosely to include all sources of income from toddy. Retrospective effect ought not to be given to the technical meaning of a word, for that meaning was not in the mind of the author when he used it. So, Mr. Sparkes was wrong in having imported the technical meaning given to an expression in 1897 to that expression as used in 1878.

MOREOVER, in the body of the Register "toddy revenue" and "toddy" are used, and "rent" is used only in the *patti*, as it were, attached to the decision; under these circumstances, the word used in the decision itself, it is submitted, carries greater weight than that in the *patti*.

AGAIN, "an author must be supposed to be consistent with himself, and therefore if in one place he has expressed his mind clearly it ought to be presumed that he is still of the same mind in another place....." So, it must be considered that in the Inam Settlement Register of 1878 "revenue" and "rent" were used without any distinction whatever between them.

THUS, it has been shown from various points of consideration, that Mr. Sparkes's view of the signification to be attached to the expression "rent of date trees" is not only not tenable, but improbable, and nay, impossible. And because of the conclusion which Mr. Sparkes's interpretation introduces into the case, the petitioner is given only tree rent.

THERE is another view why the Government cannot re-open the question of the petitioner's right to enjoy in full all the income of toddy. There is ample evidence which is referred to in the printed petition to show that the Inamdar has been enjoying the toddy income from all the sources for a long time; such a long enjoyment creates in the Inamdar a user by waiver, as it were, on the part of Government of the right, even if they have any. The Inamdar has also acquired prescriptive title to the revenue in question.

BESIDES, the Government is estopped. When a portion of the Inam land was acquired for railway purposes, the Inamdar was paid on 10-12-81 Rs. 455-8-0 on account of the 5-14 acres of dry land and *the value of the trees therein*. The Government has thus recognised the right in full of the Inamdar to the toddy trees and has lead him to believe that he had that right and to act upon it. Besides, in the accounts of 1860-61 some amount is referred to as having been refunded to the Inamdar for toddy revenue which it (the Government) had collected.

IT may here also be noted that the petitioner and his predecessors in title have been enjoying all the income from the toddy for a long time past; in fact from the time when the Inam was granted till very recently.

UNDER these circumstances, it is against justice, equity and good conscience to re-open the question whether the petitioner is entitled to the toddy revenue.

2. THE title deed and other records referring to the petitioner's title also show that the Inamdar has the right to fully enjoy all the produce of toddy. The sannad shows this: and the original sannad had been produced at the time of the Inam Settlement. The notice in original hereto annexed proves that the original sannad was in the Inam Office at the the time of the Settlement.

THE Takid of 1815 is clear on the point. The Izardar of the toddy trees at the time of the grant was then and there given trees, in lieu of those on the Inam land then granted, in the Sirkar village of Mudigere. If the trees did not fully belong to the Inamdar, this is inexplicable.

THE beriz accounts show that 2 pagodos were charged for the rent or revenue of the toddy trees on the Inam land. We find in them such entries as. "ಚರಣ ಜಮೀನ್ ಪೈಕಿ ಕೊಂದಿ ಗಡದಿಂದ ಫುಟ್ಟು ವರವಾಗತಕ್ಕದ್ದು ಬೇರೀಜಿಗೆ ವಾಕಲಾಗತಕ್ಕದ್ದು" 2 pagodos; and "ಸಾಬಕು ಕೊಂದಿ ವಾಕಲಾಗತಕ್ಕದ್ದು" 2 pagodos.

THE accounts of the first five years of Sraya tenure after the grant also confirm us in this. The 2 pagodas for these five years form a constant quantity, while the land tax increases year by year. This latter increase is, perhaps, owing to the fact that the extent of the land utilized for cultivation increased year after year; and until the maximum jodi was reached the land tax was being raised.

As to the evidence of the actual enjoyment, it has been fully set out in the printed petition which may kindly be perused. Again, in 1879 when the Inamdar complained that the Government Contractor of toddy trees did not take up the contract of the trees on the Inam land, the Government was pleased to order that the Inamdar himself might manage in this respect. The accounts produced with the printed petition for 12 years also prove the enjoyment. These accounts were prepared for 12 years at one and the same time, because there was in 1873 a requisition by means of a circular letter asking for these accounts. And this circular letter was issued as there was a complaint that the toddy of the Inam village was being sold elsewhere.

Twelve years accounts from 1860-61 and other papers were produced only with the review petition and not before; for on the first occasion the petitioner thought that it was enough if he proved enjoyment within twelve years prior to 1892, as required by the Government notification of 1901: but when the decision under review said that the petitioner had not discharged the burden of proving long enjoyment, he got the accounts now produced.

3. THREE Officers including Mr. Purnayya, the then Excise Commissioner, have been pleased to concede the full right to the Inamdar. And it has been shown above that Mr. Sparkes's interpretation of the expression "rent of date trees" is not correct. It is hard therefore, to deny to the Inamdar the right which he was undoubtedly enjoying for a long time past till very recently.

Shri Mahandaram & Dyr

*By B. Ramanna
Advocate*

Sultan Pet

Dangalad. City

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**The Dewan Saheb to the Government of
H. H. the Maharajah of Mysore.**

BANGALORE.

The humble memorial of K. V. Kothandarama
Iyer Inamdar of Damanagundu Doddi
Chennapattana Taluk praying for a recon-
sideration of the order of Government F.L.
1373-5 S.R. 69-04-6 dated the 10th
September 1908 refusing to recognise his
claim for the Toddy Excise Revenue of
the said Village.

MOST RESPECTFULLY SHEWETH.

1. Under a Sannad dated 11-5-1815 His Highness the then Maharaja of Mysore granted Kristnaraj 8-3-14 $\frac{1}{2}$ Kandies of land to one Samukhada Ooligada Nuggehalli Puttaiah on a Kayam Beriz tenure viz on a permanent right on condition of his paying 10 pagodas out of a total Beriz of 29-0-6 pagodas the balance being remitted to meet the cost of felling the trees and for improving the land which was mostly waste at the time.

That in Execution of a decree by one Kristnasamy Iyer the uncle of the Memorialist against the sons of the original grantee, the right, title and interest of the latter were purchased by the former and the properties were put into his possession about the year 1882. That the said Krishnasamy Iyer died in the year 1900 bequeathing the said properties to your memorialist who has been in possession of the said properties from that date.

That the original grantee, his sons, the Memorialist's uncle Kristnasamy Iyer and the Memorialist have been successively enjoying the income of the said lands including the Toddy Excise Revenue in respect of the Toddy trees standing on the properties till the year 1901.

That pending investigations into the claims of the Memorialist to the Toddy Excise Revenue the Government suspended the payment of the tree tax and shop rent to him from the year 1901.

That the Memorialist's claim to the tree tax and shop rent has been finally rejected by the Government by order No, F. L. 1373-5. S. R. 69 04 6 dated 10th September 1908.

That the reasons given in the Government order are:—(1) The property in the date trees vested in the Government and not in the Inamdar as the Takeed of 1815

and the account entries for some subsequent years showed "that the Inamdar was permitted to cut what date trees it was necessary to remove for cultivation and this without liability to compensate the Shendi Izardar" and "that the Izardar was decreed as not entitled to any compensation an account of the Inamdar removing date trees for the cultivation of the lands on which they stood, but the Izardar could take up other date trees in sirkar land instead."

"The 2 pagodas referred to in the Inam register of enquiry do not appear to be an account of revenue from date trees *in the entire village* and that the 2 pagodas did not thus form part of the grant itself."

II. That the memorialist begs leave to point out that the following circumstances tend to show that the construction put upon the Takeed of 1815 and accounts cannot be correct and that the property in the date trees vested in the Inamdar and not in the Government.

(1.) That ~~Class~~^{use} 3, Section 18 of Government proceedings No. 2074-83 R. F. 166-92 dated 2-8-1901 prescribes that where it is conclusively clear from the Inam settlement Register that Toddy excise has been conceded the Inam settlement should be adhered to. In this case the Inam settlement does make it clear that the Toddy Excise has been conceded.

(a) In Col. 14 of the Inam settlement Register in giving the particulars of the total amount of beriz Viz. P. 29.0-6 the 1st item is described as "Sabuk Kalayukti Beriz included for Toddy trees extent of 1 Kandy 2 Pagodas."

(b) Again in Col. 19 para 3 it is expressly stated "In the Takeed noted in Col. II the item of toddy trees was included in the Beriz and pagodas 2 were charged therefor the Inamdar is therefore entitled to the Revenue accruing from Toddy trees."

(c) Again in Col. 20 para 3 it is clearly stated "all rights to Sayer 'abkari *except to toddy which will be enjoyed as heretofore* and forests are reserved" The words in italics are very significant as showing that the right to the Excise Revenue belongs to the Inamdar and to the Inamdar alone and this is the decision of the Inam superintendent Mr. Robert Cole.

(d) In a note in Col. 19 under the head "Items enjoyed" the 5th item is "rent of date trees" Here the word *rent* is used as synonymous with *revenue* as will appear from Col. 14 & 20 already referred to.

The distinction between Rent and Revenue seems to have been for the 1st time introduced by the rules framed in 1901. The Inam settlement is thus perfectly clear that the Toddy Excise Revenue is expressly included in the grant to the Inamdar. Rule 18. Cl. 3. is imperative that where the Inam Settlement Register is thus clear, the Inam settlement should be adhered to. The order of the Government contravenes the said rule in rejecting the memorialist's claim.

(2) Even assuming for the sake of argument that the Inam Settlement Register is not clear, the Original Sannad of the village and the beriz account of the year in which the village was alienated have to be consulted under clause 3 of Rule 18.

As the memorialist claims under an auction sale, he is not in possession of the Original Sannad, but the Takeed of 1815 and the account entries for some

subsequent years are available and are referred to in the Government order. It is stated therein (a) that the felling of the Toddy trees ought not to be objected to; (b) that without prejudice to his rights of cultivation, the trees are given to him (Inamdar) (c) that in case the Izardar should complain that in consequence of the cultivation of the lands his trees are lost, no compensation is payable to him (d) that excepting the trees standing in the land assigned for cultivation which the Inamdar was at liberty to cut the remaining trees should be ordered as being included in the Ijara and the boundary stones should be planted for the lands which have been measured and added to the Mudigere Village.

It is clear from the above that the grantee's right to fell the trees cannot be questioned that the Izardar cannot claim compensation for the loss caused by such felling, that the trees are granted to the Inamdar and that the Izardar is to be given the trees in the adjoining plot which was to be added to the Mudigere village and the boundaries thereof are to be fixed by planting stones. From these facts, it follows that the property in the trees vested in the Inamdar, if as stated in the Government order in question, the Inamdar was given permission to fell trees which hindered cultivation, he would have felled all the trees if he really wanted to cultivate the whole of the land. This is clearly inconsistent with any reservation of the right of Government to any of the Toddy trees.

If the property in the trees was not transferred to the Inamdar, what meaning are we to attach to the expression that the trees are given to him without prejudice to his right of cultivation? The plain meaning would seem to be that he had the right to fell such of the trees as he thought necessary and to enjoy the remaining trees.

That the Izardar was not to claim compensation and was to be given trees elsewhere also leads to the same conclusion.

That none of the tree standing in the land granted to the Inamdar were to be enjoyed by the Izardar after the date of the grant may be inferred from the fact that the land on which the trees to be enjoyed by him stood was to form part of the—Mudigere Village and the boundaries thereof demarcated. The lands given to the Inamdar admittedly did not and do not form part of the Mudigere village.

That the lands granted to the Inamdar and the lands the trees on which were given to the Izardar and which were added to the Mudigere village originally formed one block, appears from the said accounts. This fact tends to support the above conclusion.

The Takeed of 1815 and the accounts further show that there were 'Shendi' trees only on one candy of land which was assessed at 2 pagodas and the said amount is included in the 10 pagodas payable by the Inamdar. Thus the 2 pagodas did really ^{or} form part of the grant and the statement to the contrary in the Government order is not supported by the Takeed and the accounts. That there were trees only on one candy and the remainder was waste appears from these documents and the Inam Settlement Register. The order of the Government—overlooks this fact.

III. As there has been a clear recognition by the Inam Department of the right of the Memorialist to the Toddy Excise Revenue, the Government is bound to recognise his right Vide Rule 20 of Government Proceedings No. 2074-83 R. F. 166.92 dated 2nd August 1901.

IV. There is unimpeachable documentary evidence to prove uninterrupted enjoyment of Toddy Excise Revenue by the Inamdar for upwards of 50 years and the said evidence is detailed below :—

- (1) Takeed of 1815. This has already been dealt with.
- (2) Jamabandi accounts of 1818-19, 25-26 and 30-31. These show that a fixed assessment of 10 pagodas alone was collected.
- (3) Inamti or Beriz account of 1821-22, 25-26 26-27, 30-31 and 33-34. These have been already dealt with.
- (4) Jamabandi accounts of 1860-61 show that the Excise Revenue collected by the Government was refunded to the Inamdar on the ground that he was alone entitled to it and that the Government was entitled only to the permanent beriz of 10 pagodas.
- (5) Huttuvali patties of 1861 to 71 1872, 73 and 76 furnish evidence similar to the Jamabandi accounts of 1860-61 and further show that the Excise Revenue was collected by the Inamdar in those years and that the fact was duly intimated to Government. The memorialist has been able to find them out only recently.
- (6) The lease deed of the year 1873 by the Inamdar to Shendi contractors shows that the right of drawing and vending Toddy was with the Inamdar. This document was found on search only recently.
- (7) Inam Settlement Register.
- (8) ~~Excepting~~ ^{Ac} the Inam Settlement and recognizing the Inamdar's right to the Toddy Excise Revenue the Government passed order No 1309 dated 31st march 1879 and referred to in ²¹/₁₁ January 1880.
- 9 The Government paid a sum of Rs. 455-8-0 to the Inamdar as compensation for the land and trees upon it ~~and~~ ^{when} the Government acquired the same for public purposes (Vide Inam Register.) Government Pro. $\frac{6900-3}{328}$ of 30 11-1881.
- (10) Lease deed of 1885 by the Inamdar for a period of 5 years for drawing and vending Toddy,
- (11) In a suit between the lessee of the Inamdar and the Government lessee the District Munsiff of Bangalore upheld the right of the former against the latter (Vide Decree in O. S. No. 110 of 1887 on the file of the Dt. Munsiff of Bangalore.
- (12) In 1887, the Inamdar sued his own lessee and recovered the lease amount (Vide Decree in O. S. No. 1915 of 1885 on the file of the Sub-Court, Bangalore and the evidence.
- (13) The depositions of witnesses examined by the Assistant Commissioner Closepet Sub-Division.

The above documents coupled with the fact that the Government at no time appropriated the Excise Revenue in respect of the toddy trees comprised in the grant as will be evident from their own records, conclusively establish the grant and the enjoyment there-under of the Toddy Excise Revenue.

V. Apart from the Grant, the Memorialist is entitled to a recognition of his right to the Toddy Excise Revenue from his long and uninterrupted enjoyment of Toddy Excise Revenue for upwards of 50 years ^{as} ~~are~~ provided by Rule 20 of Pro. 2074 83 R. F. 166.92 dated 2nd August 1901.

VI. Mr. Sparke's opinion that the two pagodas represent the "rent of the date trees" in the holding and not the "Revenue" has already been shown to be untenable. But the said opinion is useful as showing that the two pagodas is an account of date trees in the entire village and not on account of a portion of the village as erroneously assumed in the Government order.

In the light of the foregoing facts the memorialist most humbly prays that the Government would be most graciously pleased to reconsider the order and grant him redress of his grievances, for which act of kindness the Memorialist shall in duty bound ever pray

K.V. Kothandaramaiah

BANGALORE. }
February 1910. }

G.R.S. 34]

No. 26 5887

GOVERNMENT OF H. H. THE MAHARAJA OF MYSORE.

General and Revenue Secretariat.

(Sep Rev.)

Office Memorandum.

To

the 30-5-1901

With reference to his memorial addressed
to the Maharaja, praying for favorable order
regarding
his claim to the Toddy revenue of the Damanagundi
Dodd village, Channapattana Taluk M.D. By K.V. Kothandai
Rama Dyer, Dnamdai, is informed that the order
already passed in the case and communicated in
the endorsements issued to him is final.

By order

CSB

offg Secy

ASD
(21)
16/5

No 26 5888 of 30-5-01

TI

AK

Copy to the Secy Commr for info

Cum
29/5/01